

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 91 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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SUDHIR SHANTILAL PATEL

Versus

THE CHIEF JUDICIAL MAGISTRATE

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Appearance:

MR BC DAVE for Petitioner

Mr M A Bukhari, APP for Respondent No. 2

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CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 10/03/97

ORAL JUDGEMENT

Rule.

By way of this Criminal Revision Application, the petitioner seeks direction to quash and set aside the order of the Chief Judicial Magistrate dated 21.2.1997. The say of the petitioner is that he is the Managing Director of Winrich Tours & Travels Pvt.Ltd. which is

engaged in the business of travel agency for the purpose of passport, visa, immigration and international air bookings for sending persons to the Gulf countries mainly on service contract basis. In the year 1994, a complaint was filed by one Devkaran Naiyer Madhusudan, which has been registered as DCB.I.C.R.No.13/94 at Baroda against the petitioner alleging that he had read an advertisement in the daily newspaper for filling three vacant posts of store-keeper in Dubai which is given by the applicant and as per the demand, he has paid Rs.10,500/- and thereafter he had an amount of Rs.18,000/-. It is further alleged that since the applicant could not manage to get visa for him, he was cheated for the amount of Rs.28,500/-. In pursuance of the said FIR the applicant was arrested and was released on bail by the learned JMFC, Baroda on 24.6.1994. The passport of the applicant was impounded by the police. However, this court, by order dated 2.11.1996, in Special Criminal Application No.1594/95 directed to return the passport to the petitioner on furnishing bank guarantee of Rs.28,000/- and further that he would return the same within 2 months. In pursuance of this order, the petitioner visited Dubai and after return, deposited the passport before the Judicial Magistrate First Class before 8.1.1997. The said passport at present is lying in the court of JMFC. Baroda.

2. The petitioner made application before the Judicial Magistrate First Class, Baroda praying that the applicants to go to Dubai again in the first week of March 1997, and therefore, the passport may be returned to him for a period from 25.2.1997 to 25.3.1997. It is stated by the petitioner that due to Government policy, many persons who are not having their valid visas were sent from Gulf countries to India, and therefore, no new visas were issued by the Gulf countries since last one year. The say of the petitioner is that now the Gulf countries have started issuing visas and the applicant wants to visit Dubai for the purpose of enquiry of clients for whom he has sent papers for getting visas. This application was rejected by the order of the learned Magistrate dated 21.2.1997 on the ground that the High Court has already permitted to take his passport before two months, and therefore, such a prayer could not be granted.

3. It is argued by the learned Advocate that the passport is not returned even for a temporary period, his clients would not be able to visit Dubai and on account of which many innocent persons who are his clients may have to suffer. He further states that so far as the

complaint DCB.I.C.R.No.13/94 is concerned, a petition has also been filed before the Redressal Forum and in the said petition an order has been passed directing the applicant to refund the amount of Rs.28,500/- to the complainant along with cost of Rs.5,000/-. The learned Advocate states that he has already sent a Demand Draft for an amount of Rs.33,500/- to the complainant.

4. Mr J K Rao, Police Sub-Inspector, Baroda City has filed affidavit. He has stated that if the passport is handed over to the applicant, he is likely to run away from India and will not return to face the trial. The learned APP, relying on the affidavit, has strongly opposed the prayer made by the petitioner.

5. I have considered the rival contentions of the parties. This Court had earlier returned the passport of the petitioner on 2.11.1996 on the condition that he will return the passport within 2 months. It may also be noted that the petitioner had paid Rs.33,500/- to the complainant. Further for the interest of certain innocent persons, the petitioner's presence in Dubai appears to be genuine. Considering all the facts of the case, in my view, it is expedient in the interest of justice that the petitioner may be given one more indulgence as given by this court on earlier occasion i.e. on 2.11.1996.

6. In view of the aforesaid, this Revision Application is allowed. The order of the learned Judicial Magistrate dated 21.2.1997 is quashed and set aside. It is directed that the passport presently deposited with the learned Magistrate, Baroda shall be returned to the petitioner, on furnishing a bank guarantee for a sum of Rs.28,000/- on or before 20th March, 1997 on the condition that he would return the passport within two months from the date he furnishes the bank guarantee. The petitioner will also file affidavit of original surety that he has no objection to allow him to go abroad. The learned Advocate brought to my notice that the petitioner has been granted Anticipatory Bail in Criminal Misc.Application No.1065/97 by the order of this court dated 4.3.1997. One of the conditions in the said order is that he will not leave the country without permission of the Court. The passport will be returned to the petitioner only when he obtains prior permission from the court.

Rule made absolute accordingly. Direct Service.

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